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 MAPLE BEACH VENTURES LLC (NEVADA),
 MAPLE BEACH VENTURES ONE, LLC (WYOMING), AND
 MAPLE BEACH VENTURES ONE, LLC (DELAWARE)

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

MARCY SIMON, an individual residing in
 New York,

Plaintiff,

v.

MAPLE BEACH VENTURES LLC,
 a Nevada limited liability company;
 MAPLE BEACH VENTURES ONE, LLC,
 a Wyoming limited liability company; and
 MAPLE BEACH VENTURES ONE, LLC,
 a Delaware limited liability company,

Defendants.

CASE NO.: 3:21-mc-80013-JCS

**DEFENDANTS' RESPONSE TO
 PLAINTIFF'S ADMINISTRATIVE
 MOTION TO FILE DOCUMENTS
 UNDER SEAL REGARDING
 PLAINTIFF'S PETITION TO
 CONFIRM THE ARBITRATION
 AWARD AND FOR ENTRY OF
 JUDGMENT AND RELATED
 DOCUMENTS**

Pursuant to Civil Local Rules 79-5 and 7-11 and a confidentiality agreement, Defendants Maple Beach Ventures, LLC (“MBV”), Maple Beach Ventures One LLC (a Wyoming limited liability corporation), and Maple Beach Ventures One LLC (a Delaware limited liability corporation) (jointly “Defendants”), file a response to Plaintiff’s Administrative Motion to File Under Seal portions of her Petition to Confirm the Arbitration Award and for Entry of Judgment (the “Petition”) and related documents. (Dkt. No 2.) Defendants respectfully request that the Court narrow Plaintiff’s proposed redactions and seal the information set forth in Exhibit A to this Response and as set forth in the exhibits attached to the Declaration of Emily Reitmeier. This Response is also supported by the Declaration of Derek Rundell (“Rundell Declaration”).

PROCEDURAL BACKGROUND

Plaintiff Marcy Simon and MBV¹ entered into a consulting agreement in 2014 (the “Consulting Agreement”). A dispute subsequently arose between the parties. Because the Consulting Agreement contains an arbitration clause, the parties submitted the dispute to arbitration with JAMS. On January 13, 2021, the arbitrator issued his final award and Plaintiff filed the Petition in this Court to confirm the award and for an entry of judgment. (Dkt. No. 1.)

In connection with the Petition, Ms. Simon filed an administrative motion to seal portions of the Petition, the Declaration of Kerry Garvis Wright (the “Wright Declaration”), and the exhibits attached thereto pursuant to Local Rule 79-5 and 7-11. (Dkt. No. 2.) Ms. Simon filed the motion to seal because the parties agreed that the terms of the Consulting Agreement, as well as information related to MBV’s business was confidential. (Ex. 2 to Wright Decl. at ¶5.) To that end, the Consulting Agreement provides that the parties agree that they will “to the fullest

¹ The arbitration was initially brought against Maple Beach Ventures One, LLC (Wyoming) due to an allegation that the investments made pursuant to the Consulting Agreement had been transferred to that entity. Subsequently, it was discovered that the investments were assigned and transferred to a different entity, Maple Beach Ventures One, LLC (Delaware). (Pet. at n. 1.) Respondents and the managing director of Maple Beach Ventures One, LLC (Delaware), who also is the managing director of the other Defendants, authorized Maple Beach Ventures One, LLC (Delaware) to be added as a party to the arbitration. Neither Maple Beach Ventures One, LLC (Wyoming) or Maple Beach Ventures One, LLC (Delaware) signed any agreement with Ms. Simon. There is no need to consider the LLC operating agreement of Maple Beach Ventures One, LLC (Delaware) or the purported transfer agreement in this Court’s ruling, which are private documents that are labeled Confidential, on the relief sought in the Petition. Thus, for the reasons set forth in this Response and the Rundell Declaration ¶9, Exhibits 6 and 7 to the Wright Declaration should remain sealed in their entirety.

1 extent permitted by law, file under seal any claim, cause of action or proceeding related to any
 2 arbitration sought, compelled, or performed hereunder or any arbitration ruling or award issued”
 3 and that “[i]n no event will the receiving party or its agents oppose an action by the disclosing
 4 party to obtain a protective order, order sealing documents, or other relief requiring that
 5 confidential information to be disclosed shall be treated confidentially in connection with any
 6 claim, action or proceeding.” (*Id.* ¶7(h).) Thus, pursuant to Local Rule 79-5(e), Defendants
 7 submit this response and supporting declaration of Derek Rundell in support of sealing the
 8 information identified in this Response.

9 **ARGUMENT**

10 The parties’ arbitration agreement, which forms the basis of the Petition, is found in the
 11 Consulting Agreement. (*See* Ex. 2 to Wright Decl. ¶7(h).) Because the parties wished to
 12 maintain the confidentiality of the terms and conditions of their business relationship, as well as
 13 any disputes that might have arisen from that relationship, the parties chose confidential binding
 14 arbitration as the method to resolve any of their disputes. (*See* Ex. 2 to Wright Decl. ¶¶5, 7(h).)
 15 There is a “liberal federal policy favoring arbitration” to resolve disputes. *AT&T Mobility LLC*
 16 *v. Concepcion*, 563 U.S. 333, 339 (2011). “The point of affording parties discretion in designing
 17 arbitration processes is to allow for efficient, streamlined procedures tailored to the type of
 18 dispute. It can be specified, for example, that the decisionmaker be a specialist in the relevant
 19 field, or that proceedings be kept confidential to protect trade secrets.” *Id.* at 344-45. Here, the
 20 parties chose arbitration as a dispute resolution mechanism precisely because they wanted the
 21 terms and conditions of their agreements, as well as facts and circumstances related to any
 22 disputes, to be kept confidential. Should the Court deny the motion to seal, it would undermine
 23 the parties’ decision to choose arbitration as a method of dispute resolution.

24 The Court has the inherent authority to seal sensitive and confidential information
 25 contained in its records. *See Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978);
 26 *Hagestad v. Tragesser*, 49 F.3d 1430, 1433–1434 (9th Cir. 1995). While there is a presumption
 27 of public access to judicial records and documents, this presumption can be overcome. *Nixon*,
 28 435 U.S. at 597-98. Documents that are “more than tangentially related to the merits of a case”

1 may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v.*
 2 *Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). But “filings that are only
 3 tangentially related to the merits” may be sealed upon a lesser showing of “good cause.”
 4 *Fitzhenry-Russell v. Dr. Pepper Snapple Group, Inc.*, 326 F.R.D. 592, 616 (N.D. Cal. 2018).
 5 The “good cause” standard only requires a “particularized showing” that “specific prejudice or
 6 harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors*
 7 *Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002).

8 Here, the lesser “good cause” standard applies because the specific information sought to
 9 be sealed in connection with the Petition is only tangentially related to the merits of this action.
 10 Defendants will not contest the Petition. Thus, there is no need for the Court to engage in any
 11 analysis of the merits of the case. Judicial review of an arbitration award “is both limited and
 12 highly deferential.” *Coutee v. Barrington Capital Grp., L.P.*, 336 F.3d 1128, 1132 (9th Cir.
 13 2003). Under the FAA, “the court **must** grant such an order unless the award is vacated
 14 modified, or corrected as prescribed in [9 U.S.C.] sections 10 and 11.” 9 U.S.C. § 9.

15 The Petition and Exhibits filed by Plaintiff needlessly exceed that which is required by
 16 this Court to confirm the arbitration award. A petition to confirm an arbitration award need only
 17 include: (1) the agreement to arbitrate; (2) the selection or appointment of the arbitrator or
 18 umpire; (3) if there is a written extension for the time within which the award must be made, any
 19 such extension; (4) the arbitral award; and (5) any notices, affidavits or other papers “used upon
 20 an application to confirm, modify, or correct the award,” together with each court order on the
 21 application. 9 U.S.C. § 13. The petition must also include information to demonstrate to the
 22 district court that there is jurisdiction, since federal courts are courts of limited jurisdiction. It
 23 does not need to include, for example, the actual agreement which forms the basis of a breach of
 24 contract action leading to arbitration, agreements that do not include the arbitration clause at
 25 issue,² pages of factual background leading up to the creation of the Consulting Agreement at

26
 27 ² These other agreements have provisions unrelated to the Consulting Agreement. (*See, e.g.*, Ex. 3 to Wright
 28 Decl. ¶¶1(a)(i)(1)-(4); 1(a)(ii)-(iii).) Including extraneous information is even more concerning when it is one-
 sided and inflammatory, and could lead to a real risk of reputational harm. (*See* Pet. at 4:9-15.) Defendants do
 not adopt nor agree with all the purported “facts” in the Petition, which omit key findings from the arbitration.

1 issue, and a play by play of the post-award briefing. But that is precisely what the Plaintiff
2 included in her Petition and Exhibits. This information is neither essential to the court
3 confirming the award and issuing a judgment in this action, nor is it necessary for the public to
4 be able to understand the Court’s ruling on the Petition. This is particularly true here because
5 Respondents do not intend to oppose the request to confirm the arbitration award.

6 It is important to note that this is not simply a case where the parties agreed to
7 confidential arbitration and are seeking to restrict public access to judicial filings involving that
8 arbitration. Defendants are mindful that the standard to seal cannot be met simply by showing
9 that the document is subject to a protective order or by stating in general terms that the material
10 is considered to be confidential. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,
11 1182–83, n.9 (9th Cir. 2006). But here, the parties’ intent—that the terms of the business
12 relationship remain confidential and that disputes be resolved through confidential arbitration—
13 should not be undermined because Plaintiff filed superfluous information with her Petition. An
14 order denying the motion gives license to parties to disregard the confidentiality provisions set
15 forth in any agreement under the guise that such information is “necessary” to confirm an
16 arbitration award in court. Thus, release of this information constitutes a “specific prejudice or
17 harm” to Defendants. *Phillips*, 307 F.3d at 1210–11.

18 Additionally, there is also potential harm which can be inflicted on third parties. Other
19 than the Consulting Agreement, the Petition and its attachments reference individuals and
20 entities who were not parties to the arbitration or this Petition. (*See, e.g.*, Petition at 2:20-3:8;
21 3:25-28; Ex. 3 to Wright Decl. ¶1(a)(iii).) The parties specifically negotiated for, and included
22 express terms to ensure that the relevant agreements preserved confidentiality. Because the
23 references to the non-parties are not necessary to confirm the arbitration award, particularly in an
24 uncontested proceeding, an order sealing those portions of the Petition is appropriate. Indeed, it
25 is proper to protect an individual’s privacy interests and to seal personal information, including a
26 person’s name, when that person is a non-party. *See Vietnam Veterans of Am. v. C.I.A.*, 2012
27 WL 1094360, at *1 (N.D. Cal. Mar. 29, 2012) (sealing exhibits containing records with
28 “identifying and sensitive personal information about certain individuals[.]”).

Even if this Court should find that the “compelling reasons” standard applies, the records still should be sealed. “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, [or] promote public scandal[.]” *Kamakana*, 447 F.3d at 1179 (*quoting Nixon*, 435 U.S. at 598). Here, much like in *Pryor v. City of Clearlake*, 2012 WL 2711032, at *2 (N.D. Cal. July 6, 2012), “the lack of relevance combined with the information’s sensitive, private nature raises the likelihood that it was filed . . . because of private spite or a desire to scandalize the public.” (*See also* Ex. 1 to Wright Decl. at 9-10.) Releasing the information sought to be sealed would do nothing more than publicize information the parties intended to remain private when such information is unnecessary to resolving the Petition.³

Despite the parties’ desire for confidentiality, Defendants are mindful that should some of the information submitted by Plaintiff, albeit unnecessary, be publicly released, it will not cause any harm. For example, while Defendants believe the parties agreed to treat the entirety of Exhibit 2 (the Consulting Agreement) as confidential, it recognizes that boilerplate language, such as information about choice of law, will not cause harm if released. Thus, the redactions made by Defendants are “narrowly tailored to seek sealing only of sealable material.” Local Civil Rule 79-5. The redactions respect the agreed-upon confidentiality and prevent parties from using judicial confirmations of arbitration awards to circumvent such agreements.

CONCLUSION

For the reasons stated herein and in the Rundell Declaration, Defendants respectfully request that the Court permit the documents identified in Exhibit A to be sealed as indicated. Should this Court deny the Motion to Seal, Defendants respectfully ask the Court for permission to file a renewed motion to seal in accordance with whatever Order the Court may enter.

³ Information about a non-party should not be made public even under a “compelling reasons” standard. *See, e.g., Kowalsky v. Hewlett-Packard Co.*, 2012 WL 892427, at *2 (N.D. Cal. Mar. 14, 2012) (non-party’s name may be redacted); *Mullins v. Premier Nutrition Corp.*, 2014 WL 4058484, at *2 (N.D. Cal. Aug. 15, 2014) (finding that “private and sensitive information regarding personal life issues of a party and non-party” can be sealed); *Gordon v. Nexstar Broad., Inc.*, 2019 WL 2615753, at *2 (E.D. Cal. June 26, 2019) (granting motion to seal where the court finds “little value to the public in releasing these [personal and private] materials”).

1 DATED: February 8, 2021

2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

3 By: /s/ Jack P. DiCanio

4 JACK P. DICANIO

Attorneys for Defendants

5 MAPLE BEACH VENTURES LLC (NEVADA),
6 MAPLE BEACH VENTURES ONE, LLC (WYOMING), AND
7 MAPLE BEACH VENTURES ONE, LLC (DELAWARE)

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Exhibit A

DOCUMENT PORTION(S) TO BE SEALED	DECLARATORY SUPPORT FOR SEALING	REASONS FOR SEALING
<i>Plaintiffs' Petition to Confirm the Arbitration Award and for Entry of Judgment (Dkt. No. 1)</i>		
Page 1, lines 27-28	Rundell Decl. ¶¶2-5	Information about non-party
Page 1, line 28	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Page 2, line 1	Rundell Decl. ¶¶2-5	Information about non-party
Page 2, lines 20-28; Page 3 lines 1-5	Rundell Decl. ¶¶2-5	Information about non-party, tangential confidential information not necessary to resolving this action
Page 3, line 6	Rundell Decl. ¶¶2-5	Information about non-party
Page 3, lines 9-10	Rundell Decl. ¶¶2-5	Information about non-party, Tangential confidential information not necessary to resolving this action
Page 3, lines 12, 25, 26	Rundell Decl. ¶¶2-5	Information about non-party
Page 3, line 28	Rundell Decl. ¶¶2-5	Information about non-party
Page 4, lines 5-6; 9-15	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Page 7, lines 22, 23	Rundell Decl. ¶¶2-5	Information about non-party
Page 7, line 22	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action

DOCUMENT PORTION(S) TO BE SEALED	DECLARATORY SUPPORT FOR SEALING	REASONS FOR SEALING
<i>Declaration of Kerry Garvis Wright in Support of Plaintiff's Petition to Confirm the Arbitration Award and for Entry of Judgment (Dkt. No. 1-1) and Supporting Exhibits (Dkt. Nos. 1-2 – 1-8)</i>		
Wright Declaration Page 2, lines 15, 17, 19	Rundell Decl. ¶¶2-5	Information about non-party
Wright Declaration Page 2, line 24	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 1, Page 5, lines 1- 13, Footnote 1	Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 1, Page 5, line 15	Rundell Decl. ¶¶2-5	Information about non-party

1	Exhibit 1, Page 8, lines 2, 4, 6, 10, 16, 17, 18	Rundell Decl. ¶¶2-5	Information about non-party
2	Exhibit 1, Page 8, line 5	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
3			
4	Exhibit 1, Page 9, lines 3, 11, 12	Rundell Decl. ¶¶2-5	Information about non-party
5	Exhibit 1, Page 9, lines 16, 17, 20, 21	Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
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8	Exhibit 1, Page 13, lines 17, 18, 19, 22, 24	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
9	Exhibit 1, Page 14, lines 2-3, 8, 9	Rundell Decl. ¶¶2-5	Information about non-party
10	Exhibit 1, Page 14, lines 3, 4, 20	Rundell Decl. ¶¶2-5	Information about non-party
11			
12	Exhibit 1, Page 14, lines 23, 24	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
13			
14	Exhibit 1, Page 15, lines 3, 17, 22	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
15			
16	Exhibit 1, Page 15, lines 13-16	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
17	Exhibit 1, Page 17, line 6	Rundell Decl. ¶¶2-5	Information about non-party
18	Exhibit 1, Page 22, line 23	Rundell Decl. ¶¶2-5	Information about non-party
19	Exhibit 1, Page 23, line 2	Rundell Decl. ¶¶2-5	Information about non-party
20	Exhibit 1, Page 25, footnote 2	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
21	Exhibit 1, Page 27, lines 16, 17	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
22			
23	Exhibit 1, Page 28, line 1	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
24			
25	Exhibit 1, Page 29, lines 5, 7, 13, 16	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
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27	Exhibit 1, Page 30, lines 12, 14, 18, 19	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
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Exhibit 1, Page 31, line 16	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 32, line 10	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 33, lines 9, 10, 11	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 37, lines 9, 17, 18, 20	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 37, line 11	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 1, Page 37, line 19-20	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 38, lines 2, 7, 13, 20-21, 22	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 1, Page 43, line 17	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 1, Page 43, line 18	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 1, Page 47, line 7	Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 1, Page 47, lines 7, 8	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 2, ¶2	Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 2, ¶3(f)	Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 2, ¶3(g)	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 2, ¶7(a)(iii)	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 2, Attachment I	Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 3, Page 1, Introduction	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 3, Page 1, Stipulations	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action

Exhibit 3, ¶1(a)	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 3, ¶13	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 3, ¶16	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 3, Pages 6, 7	Rundell Decl. ¶6; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 4, Page 1	Rundell Decl. ¶7; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 4, ¶16	Rundell Decl. ¶7; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 5, Page 1, introductory paragraph and whereas clauses	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 5, ¶¶ 2, 3	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 5, ¶4	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party; tangential confidential information not necessary to resolving this action
Exhibit 5, ¶6	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 5, ¶7	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Tangential confidential information not necessary to resolving this action
Exhibit 5, Page 2, signature block	Rundell Decl. ¶8; <i>see also</i> Rundell Decl. ¶¶2-5	Information about non-party
Exhibit 6 (entire doc)	Rundell Decl. ¶¶2, 9	Tangential confidential information not necessary to resolving this action
Exhibit 7 (entire doc)	Rundell Decl. ¶¶2, 9	Tangential confidential information not necessary to resolving this action